THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No. 23640 of 2005

-

Dated: 03.11.2005

Between:

The Commercial & Industrial Finance (PVt) Ltd., D.No. 3-6-161, Hyderguda, Hyderabad, Rep. by its Director, Sri Mahesh Chand.

..... PETITIONER

AND

The Commissioner, Serlingampalli Municipality, Ranga Reddy District.

.....RESPONDENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No. 23640 of 2005

ORDER:

-

The petitioner company claims to be absolute owner of land admeasuring Acs.312.17 guntas in Survey Nos.18, 19, 44, (44/1), 45, 56, 69, 77, 87, 92, 93, 94, 95, 97, 98 and 117/2 of Miapur Village, Serlingampalli Mandal, Ranga Reddy District. It appears, one Abdul Rahman Khan and his three sisters filed O.S.No.38 of 1993 on the file of the Court of the First Additional District Judge, Ranga Reddy District, for partition of the lands, claiming the land in question to be ancestral property. The said suit was allowed and a preliminary decree was passed on 21.02.2000. Assailing the same, the petitioner herein filed an appeal, being A.S.No.1161 of 2001 in this Court, and in C.M.P.No.7492 of 2001, dated 13.04.2001, this Court stayed the operation of the judgment and decree in O.S.No.38 of 1993. It is alleged that when the matter was pending in the Civil Court, Abdul Rahman Khan and others sold the land to different persons. It is further alleged that these persons obtained sanctioned plans from the respondent-Municipality and are proceeding

with the construction of the houses. Therefore, the petitioner seeks a writ of mandamus declaring the action of the respondent in granting permissions/sanctioned plans to make construction of buildings in the land at Miapur as illegal and arbitrary.

The learned Counsel for the petitioner, Sri N.Bharath Babu, submits that Section 204 read with Section 209 of the Andhra Pradesh Municipalities Act, 1965, casts a duty on the Commissioner to verify the title of the person applying for building permission, but the respondent sanctioned permissions without verifying the same. He also submits that though a representation was made on 31.08.2005, the respondent did not take any action so far, and in the meanwhile, persons who purchased the property from Abdul Rahman Khan or his sisters are proceeding with the construction.

This writ petition cannot be accepted for two reasons. First, admittedly, the petitioner filed A.S.No.1161 of 2001 before this Court and also obtained stay of operation of the judgment and decree in O.S.No.38 of 1993, dated 29.12.2000. Therefore, nothing prevents the petitioner from moving another application, if so advised, in the same appeal for appropriate orders against those persons who allegedly purchased the land from Abdul Rahman Khan and others. Secondly, except making an allegation that some third parties, who purchased the land, obtained building permission from the respondent-Municipality for construction of houses, all these persons are not even made parties to this writ petition, atleast in a representative capacity.

In exercise of the powers under Article 226 of the Constitution of India, the High Court can either enforce the rights, be it constitutional, statutory or communal rights. The power is also exercised to compel the public authorities to discharge their statutory duties and common law duties while passing orders and issuing necessary writs more often than not the rights of other persons are affected. In the absence of such affected persons it is not competent for the High Court to exercise the jurisdiction under Article 226 of the Constitution of India and issue writs either for enforcing the rights or for compelling due performance of the duties.

In **Prabodh Verma v. State of U.P.**, it has been held by the Supreme Court that in writ petitions filed against the State questioning the validity of recruitment of a large number of persons in service could not be proceeded with to hear an take decision adverse to those affected persons without getting them or their representatives impleaded as parties. The said view was followed by the Supreme Court in **Ishwar Singh v. Kuldip Singh**; **J.Jose Dhanapaul v. S.Thomas** and **All India SC & ST Employees Association v. A.Arthur Jeen**. Therefore, when the necessary parties whose rights were affected are not made parties to the writ petitions, the Court exercising jurisdiction under Article 226 should reject the writ petitions *in limini.*

For the above reasons, the Writ Petition is dismissed. No costs.

_____

(V.V.S.RAO, J)

03.11.2005

vs